

DATELINE:

LABOR & WORKFORCE DEVELOPMENT

A quarterly publication for employers from the Tennessee Department of Labor & Workforce Development
September 2007

2007 Legislative Changes Noted

The 2007 General Assembly passed three pieces of legislation that impacted the unemployment insurance program.

Public Chapter 183 impacted the **administration of the Employment Security division** by changing **three different aspects of benefit eligibility and one administrative procedure** under Employment Security law. These changes were effective July 2, 2007:

Wages in lieu of notice – Wages in lieu of notice, prior to this law change, were disqualifying to claimants, as a claimant was not allowed to receive both wages in lieu of notice and unemployment benefits simultaneously. Wages in lieu of notice are payments made to an employee who has been separated without advance notice, and such payments are the equivalent of the wages the employee would have earned had he been allowed to work during the period of notice. This law change removed this disqualification and allows claimants to begin receiving unemployment benefits starting at the time of separation regardless of the type of separation pay they may be receiving.

Accepting incentives to leave employment – This law change requires a claimant to be disqualified for benefits if the separation from his most recent work is due to accepting an incentive to leave work. Prior to this law change, the monetary value of the incentive had to be calculated, and if the value of the incentive was greater than the claimant's maximum benefit amount in unemployment benefits, he was disqualified. If the value of the incentive was less than his maximum benefit amount, the claimant was approved for benefits. This law change removed the calculation of the monetary value of the incentive from the equation. Now, if a claimant accepts any incentive to leave his job, he is disqualified for unemployment benefits; however, an employer's separation pay such as severance, wages in lieu of notice or other such defined payments do not qualify as an incentive payment.

Back pay awards – This law change removed the disqualification for and overpayment of unemployment benefits to claimants who have received a back pay award. Prior to this law change, if a claimant was awarded back pay, the employer was required to notify the department of the amount of the back pay award and to ascertain the amount of unemployment benefits the claimant has received. The employer was further required to deduct the amount of unemployment benefits the claimant had received from the back pay award and reimburse the department for this overpayment of benefits. With this law change, the employer no longer is required to reimburse the department as no overpayment is established under these circumstances.

Telephone appeals – This law change allows the Appeals Tribunal and the Board of Review to conduct all or part of any hearing by telephone if good cause is shown. In determining good cause,

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Routing Box

- ☐ Personnel Director
- ☐ Manager
- ☐ Payroll Officer
- ☐ Other

Premium Rate Notices mailed - Table 4 remains in effect

Tennessee employers last month received their annual unemployment insurance premium rate notices. Tennessee's rate year begins on July 1, and the notices informed employers of their premium rate for the third and fourth calendar quarters of 2007 based on the rates present on Premium Table 4. Whether we will remain on Table 4 for the first and second calendar quarters of 2008 depends on the level of Tennessee's Unemployment Compensation Trust Fund on December 31, 2007.

New businesses within certain industries are subject to premium rates other than the standard 2.7% new employer rate. Those industries are Construction, with a new employer rate of 5.0% (the lowest rate for that industry since industry-based new employer rates were enacted over twenty years ago!); NAICS Manufacturing Sectors 31 and 33, at 6.0%; and, Mining & Extraction, at 6.5%.

If you have any questions about your premium rate, contact the rates specialists in our **Employer Services Unit at 615.741.3246**.

Legislation (Cont.)

factors such as the physical security risk to the participants, the travel distance to the hearing location for either or both of the parties involved, the relative hardship or convenience to the parties, the complexities of the issues or any other factor relevant to conducting a fair hearing must be considered. Prior to this law change, if any party asked for the hearing to be held in person, the department was required to honor this request and all parties had to appear in person.

Public Chapter 264 requires that written notification of **decisions from the Board of Review** must be made by **certified mail**. This requirement became effective July 1, 2007.

Public Chapter 197 impacted **two of the Premium Rate Tables**: On **Premium Rate Table 3**, employers with reserve ratio percents equal to or greater than 5.0 but less than 6.0 had their rate reduced from 2.7 percent to 2.65 percent. On **Premium Rate Table 4**, employers with reserve ratio percents equal to or greater than 14.0 but less than 16.0 had their rate increased from .40 percent to .45 percent. These two changes were effective July 1, 2007.

Notice of address change for TDLWD

The TDLWD central offices in Nashville are moving to a new building in MetroCenter this fall. Correspondence to and from offices in that building will have the following address: **TDLWD, [name of the unit or division], 220 French Landing Drive, Nashville, TN. 37243**. Also, the **Nashville Tax Office** address has changed from 2232 Metro Center Blvd. to **2232 Rosa Parks Blvd.**

Department prepares for Smoke-Free TN

Beginning October 1, 2007, smoking will be prohibited in most workplaces in Tennessee, e.g., restaurants, bars, sports arenas, and shopping malls, per Tennessee Smoke-Free Legislation passed by the General Assembly. Exceptions will include establishments that prohibit, at all times, admittance to anyone under 21, including employees; hotels and motels with smoking rooms, if they do not make up more than 25 percent of rooms; and nursing homes and open-air decks or patios, but in those cases, smoke must not infiltrate the area where smoking is prohibited.

The Smoke-Free Tennessee legislation requires "No Smoking" signs or the international "No Smoking" symbol be clearly and conspicuously posted at every entrance to every public place and place of employment where smoking is prohibited.

The Department of Labor & Workforce Development and the Department of Health are charged with enforcing the ban on smoking in workplaces and will make sure establishments are complying with the act as part of their mandated inspections.

Penalties for non-compliance are as follows:

1. A person who knowingly smokes in a prohibited area shall be fined \$50.
2. A person who owns, manages, operates, or otherwise controls any public place where smoking is prohibited and who fails to comply with any provision of the act shall be subject to the following:
 - a) A written warning from the department for a first violation in a 12-month period;
 - b) A civil penalty of \$100 for a second violation in any 12-month period; and
 - c) A civil penalty of \$500 for a third or subsequent violation in any 12-month period.
3. Each day on which a knowing violation of the act occurs shall be considered a separate and distinct violation.

The Department of Labor & Workforce Development is currently working with the Department of Health to promulgate rules for enforcement of the Non-Smoker Protection Act. We will be issuing joint press releases to inform employers on enforcement policy closer to the October 1 effective date.

For FAQs, go to <http://www.smokefreetn.org/docs/6.06.07SmokeFreeFAQ.pdf>. For a complete copy of Public Chapter 410, you can read it on our Web site at http://state.tn.us/labor-wfd/non_smoker_protection_act.pdf.

Bailey new TDLWD general counsel

Commissioner Neeley is pleased to announce the appointment of **Dan Bailey** as the department's **new general counsel**.

Dan began work as a staff attorney for the TDLWD in the Employment Security Division Legal Office in 2003. He was previously in private practice where he focused on labor law and employment litigation. He received his law degree in 1998 from the Nashville School of Law, graduating in the top 15 percent of his class. He also holds a B.A. in Labor Studies from Antioch University in Yellow Springs, Ohio.

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Phil Bredesen
Governor

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